

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

EL PAPEL, LLC, et al.,

Plaintiffs,

v.

ROBERT W. FERGUSON, in his official  
capacity as Attorney General of the State  
of Washington; JENNY A. DURKAN, in  
her official capacity as the Mayor of the  
City of Seattle; and THE CITY OF  
SEATTLE, a municipal Corporation,

Defendants.

NO. 2:20-cv-01323-RAJ-JRC

DEFENDANT ROBERT W. FERGUSON'S  
ANSWER TO PLAINTIFFS' FIRST  
AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF AND AFFIRMATIVE DEFENSES

**I. GENERAL DENIALS**

Defendant Robert W. Ferguson, in his official capacity as Attorney General of the State of Washington, by and through his attorneys, Assistant Attorneys General Zachary Pekelis Jones and Brian H. Rowe, and Deputy Solicitor General Jeffrey T. Even, hereby answers Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief (Complaint), Dkt. 81. Except as herein expressly admitted or qualified, Defendant Ferguson denies each and every allegation, statement, or charge contained in the Complaint, and denies that Plaintiffs are entitled to any of the relief requested.

The coronavirus disease 2019 (COVID-19) pandemic is an unprecedented state, national, and international emergency that requires an unprecedented governmental response to protect public health. The emergency orders issued by the Governor of Washington, like similar orders

1 issued by numerous national, state, regional, and local governments around the world, currently  
2 represent the best mechanism to mitigate the spread of COVID-19. Specifically,  
3 Proclamation 20-19 (including its amendatory proclamations) is a lawful exercise of the  
4 Governor's emergency powers that infringes none of Plaintiffs' constitutional rights.

5 Defendant Ferguson responds to the numbered allegations in the Complaint as follows:

## 6 **II. ANSWER**

### 7 **INTRODUCTION**

8 1. Defendant Ferguson admits that the COVID-19 pandemic struck the United  
9 States in early 2020 and that Governor Jay Inslee issued Proclamation 20-05 on February 29,  
10 2020, declaring a State of Emergency in Washington State. Defendant Ferguson is without  
11 information sufficient to form a belief as to the truth of the remaining factual allegations in  
12 Paragraph 1, and therefore denies the same. To the extent further response is required, it is  
13 denied.

14 2. Defendant Ferguson admits that on March 18, 2020, Governor Inslee issued  
15 Proclamation 20-19, temporarily prohibiting certain residential evictions in Washington.  
16 Defendant Ferguson denies Paragraph 2's characterization of the purpose and effect of  
17 Proclamation 20-19, and refers to the text of Proclamation 20-19, which speaks for itself.  
18 Paragraph 2 asserts legal conclusions and argument to which no response is required. Defendant  
19 Ferguson is without information sufficient to form a belief as to the truth of the remaining factual  
20 allegations in Paragraph 2, and therefore denies the same. To the extent further response is  
21 required, it is denied.

22 3. Paragraph 3 asserts legal conclusions to which no response is required. Defendant  
23 Ferguson is without information sufficient to form a belief as to the truth of the factual allegations  
24 in Paragraph 3, and therefore denies the same. To the extent a response is required, it is denied.

25 4. Paragraph 4 asserts legal conclusions to which no response is required. To the  
26 extent a response is required, it is denied.

5. Paragraph 5 asserts legal conclusions to which no response is required. To the extent a response is required, it is denied.

## JURISDICTION AND VENUE

6. Paragraph 6 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 6 is denied.

7. Paragraph 7 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 7 is denied.

8. Paragraph 8 asserts legal conclusions to which no response is required. Defendant Ferguson is without information sufficient to form a belief as to the truth of the remaining factual allegations in Paragraph 8, and therefore denies the same. To the extent a further response is required, Paragraph 8 is denied.

9. Defendant Ferguson admits that venue is proper in this judicial district. Defendant Ferguson is without information sufficient to form a belief as to the factual allegations in Paragraph 9, and therefore denies the same. To the extent a further a response is required, it is denied.

## PARTIES

## Plaintiffs

10. Defendant Ferguson is without information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and therefore denies the same.

## Defendants

11. Defendant Ferguson admits that he is the Attorney General of the State of Washington and that he is being sued in his official capacity. The remaining allegations in Paragraph 11 are legal conclusions to which no response is required. To the extent a further response is required, it is denied.

12. Defendant Ferguson admits that Jenny A. Durkan is the Mayor of the City of Seattle and that she is being sued in her official capacity. The remaining allegations in

Paragraph 12 are legal conclusions to which no response is required. To the extent a further response is required, it is denied.

13. Admitted.

14. Paragraph 14 asserts legal conclusions to which no response is required. Defendant Ferguson is without information sufficient to form a belief as to the truth of the factual allegations in the last sentence of Paragraph 14, and therefore denies the same. To the extent Paragraph 14 incorporates by reference allegations in other paragraphs of the Complaint, Defendant Ferguson incorporates by reference his responses to those paragraphs. To the extent a further response is required, Paragraph 14 is denied.

#### GENERAL ALLEGATIONS

15. Paragraph 15 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 15 is denied.

16. Paragraph 16 asserts legal conclusions to which no response is required. Defendant Ferguson admits that the quoted language appears in Proclamation 20-19.3, which speaks for itself. To the extent a further response is required, Paragraph 16 is denied.

17. Paragraph 17 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 17 is denied.

18. Paragraph 18 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 17 is denied.

19. Defendant Ferguson admits that Proclamation 20-19 was issued on March 18, 2020, and that it has been extended through subsequent amendments. Defendant Ferguson denies that “[c]urrently, the moratorium is in effect until October 15, 2020.” Under Proclamation 20-19.5 (issued December 31, 2020), the moratorium is currently set to expire on March 31, 2021. To the extent a further response is required, Paragraph 19 is denied.

20. Paragraph 20 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 20 is denied.

1           21. Paragraph 21 asserts legal conclusions to which no response is required. To the  
2 extent a response is required, Paragraph 21 is denied.

3           22. Paragraph 22 asserts legal conclusions to which no response is required. To the  
4 extent a response is required, Paragraph 22 is denied.

5           23. Paragraph 23 asserts legal conclusions to which no response is required. To the  
6 extent a response is required, Paragraph 23 is denied.

7           24. Paragraph 24 asserts legal conclusions to which no response is required. To the  
8 extent paragraph 24 incorporates by reference other paragraphs in the Complaint, Defendant  
9 Ferguson incorporates by reference his responses to those paragraphs. To the extent a further  
10 response is required, Paragraph 24 is denied.

11           25. Paragraph 25 asserts legal conclusions to which no response is required.  
12 Defendant Ferguson admits that the quoted language appears in Exhibit H (Seattle  
13 Ordinance 126075). Seattle Ordinance 126075 speaks for itself and requires no response by way  
14 of factual pleading. To the extent a response is required, Defendant Ferguson denies any further  
15 allegations in Paragraph 25.

16           26. Paragraph 26 asserts legal conclusions to which no response is required.  
17 Defendant Ferguson admits that the quoted language appears in Exhibit H (Seattle  
18 Ordinance 126075). Seattle Ordinance 126075 speaks for itself and requires no response by way  
19 of factual pleading. To the extent a response is required, Defendant Ferguson denies any further  
20 allegations in Paragraph 26.

21           27. Paragraph 27 asserts legal conclusions to which no response is required. To the  
22 extent a response is required, Paragraph 27 is denied.

23           28. Paragraph 28 asserts legal conclusions to which no response is required. To the  
24 extent a response is required, Paragraph 28 is denied.

25           29. Paragraph 29 asserts legal conclusions to which no response is required. To the  
26 extent a response is required, Paragraph 29 is denied.

1           30. Paragraph 30 asserts legal conclusions to which no response is required. To the  
2 extent a response is required, Paragraph 30 is denied.

3           31. Paragraph 31 asserts legal conclusions to which no response is required. To the  
4 extent a response is required, Paragraph 31 is denied.

5           32. Defendant Ferguson is without information sufficient to form a belief as to the  
6 truth of the allegations in Paragraph 32, and therefore denies the same.

7           33. Defendant Ferguson is without information sufficient to form a belief as to the  
8 truth of the allegations in Paragraph 33, and therefore denies the same.

9           34. Defendant Ferguson denies that the rental property in question “is currently  
10 occupied by two holdover tenants whose lease expired on July 31.” Defendant Ferguson is  
11 without information sufficient to form a belief as to the truth of the remaining allegations in  
12 Paragraph 34, and therefore denies the same.

13           35. Denied.

14           36. Defendant Ferguson is without information sufficient to form a belief as to the  
15 truth of the allegations in Paragraph 36, and therefore denies the same.

16           37. Defendant Ferguson is without information sufficient to form a belief as to the  
17 truth of the allegations in Paragraph 37, and therefore denies the same.

18           38. Defendant Ferguson is without information sufficient to form a belief as to the  
19 truth of the allegations in Paragraph 38, and therefore denies the same.

20           39. Defendant Ferguson is without information sufficient to form a belief as to the  
21 truth of the allegations in Paragraph 39, and therefore denies the same.

22           40. Defendant Ferguson is without information sufficient to form a belief as to the  
23 truth of the allegations in Paragraph 40, and therefore denies the same.

24           41. Defendant Ferguson is without information sufficient to form a belief as to the  
25 truth of the allegations in Paragraph 41, and therefore denies the same.  
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1           42. Defendant Ferguson is without information sufficient to form a belief as to the  
2 truth of the allegations in Paragraph 42, and therefore denies the same.

3           43. Defendant Ferguson is without information sufficient to form a belief as to the  
4 truth of the allegations in Paragraph 43, and therefore denies the same.

5           44. Defendant Ferguson is without information sufficient to form a belief as to the  
6 truth of the allegations in Paragraph 44, and therefore denies the same.

7           45. Defendant Ferguson is without information sufficient to form a belief as to the  
8 truth of the allegations in Paragraph 45, and therefore denies the same.

9           46. Defendant Ferguson is without information sufficient to form a belief as to the  
10 truth of the allegations in Paragraph 46, and therefore denies the same.

11           47. Defendant Ferguson is without information sufficient to form a belief as to the  
12 truth of the allegations in Paragraph 47, and therefore denies the same.

13           48. Defendant Ferguson is without information sufficient to form a belief as to the  
14 truth of the allegations in Paragraph 48, and therefore denies the same.

15           49. Defendant Ferguson is without information sufficient to form a belief as to the  
16 truth of the allegations in Paragraph 49, and therefore denies the same.

17           50. Defendant Ferguson is without information sufficient to form a belief as to the  
18 truth of the allegations in Paragraph 50, and therefore denies the same.

19           51. Paragraph 51 asserts legal conclusions to which no response is required. To the  
20 extent a response is required, Paragraph 51 is denied.

21           52. Paragraph 52 asserts legal conclusions to which no response is required. To the  
22 extent a response is required, Paragraph 52 is denied.

23           53. Defendant Ferguson is without information sufficient to form a belief as to the  
24 truth of the allegations in Paragraph 53, and therefore denies the same.

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55. Paragraph 55 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 55 is denied.

57. Paragraph 57 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 57 is denied.

## DECLARATORY RELIEF ALLEGATIONS

60. Paragraph 60 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 60 is denied.

62. Paragraph 62 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 62 is denied.

63. Defendant Ferguson incorporates by reference his responses to the preceding paragraphs.



1           64. Defendant Ferguson admits that the language quoted in the first sentence of  
2 paragraph 64 appears in Article I, Section 10, Clause 1 of the United States Constitution, though  
3 the capitalization of certain words is incorrect. The last sentence of Paragraph 64 asserts legal  
4 conclusions to which no response is required. To the extent a further response is required,  
5 Paragraph 64 is denied.

6           65. Paragraph 65 asserts legal conclusions to which no response is required. To the  
7 extent a response is required, Paragraph 65 is denied.

8           66. Paragraph 66 asserts legal conclusions to which no response is required. To the  
9 extent a response is required, Paragraph 66 is denied.

10          67. Defendant Ferguson incorporates by reference his responses to Paragraphs 24–  
11 27. Paragraph 67 asserts legal conclusions to which no response is required. To the extent a  
12 response is required, Paragraph 67 is denied.

13          68. Paragraph 68 asserts legal conclusions to which no response is required. To the  
14 extent a response is required, Paragraph 68 is denied.

15          69. Paragraph 69 asserts legal conclusions to which no response is required. To the  
16 extent a response is required, Paragraph 69 is denied.

17          70. Paragraph 70 asserts legal conclusions to which no response is required. To the  
18 extent a response is required, Paragraph 70 is denied.

19          71. Paragraph 71 asserts legal conclusions to which no response is required. To the  
20 extent a response is required, Paragraph 71 is denied.

21           **SECOND CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF – CITY OF**  
22           **SEATTLE’S SICTY COUNCIL’S REPAYMENT ORDINANCE’S**  
23           **UNCONSITUTIONAL IMPAIRMENT OF A CONTRACT**

24          72. Defendant Ferguson incorporates by reference his responses to the preceding  
25 paragraphs.  
26

1           73. Paragraph 73 asserts legal conclusions to which no response is required. To the  
2 extent a response is required, Paragraph 73 is denied.

3           74. Paragraph 74 asserts legal conclusions to which no response is required. To the  
4 extent a response is required, Paragraph 74 is denied.

5           75. Paragraph 75 asserts legal conclusions to which no response is required. To the  
6 extent a response is required, Paragraph 75 is denied.

7           76. Paragraph 76 asserts legal conclusions to which no response is required. To the  
8 extent a response is required, Paragraph 76 is denied.

9           77. Paragraph 77 asserts legal conclusions to which no response is required. To the  
10 extent a response is required, Paragraph 77 is denied.

11           **THIRD CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF – CITY OF**  
12           **SEATTLE’S CITY COUNCIL’S UNCONSTITUTIONAL TAKING OF THE**  
13           **PLAINTIFFS’ RENTAL PROPERTIES**

14           78. Defendant Ferguson incorporates by reference his responses to the preceding  
15 paragraphs.

16           79. Defendant Ferguson admits that the language in the first sentence of Paragraph 79  
17 appears in the Fifth Amendment to the United States Constitution. The United States  
18 Constitution speaks for itself and requires no response by way of factual pleading, and on that  
19 basis, Defendant Ferguson denies any further allegations in Paragraph 79.

20           80. Paragraph 80 asserts legal conclusions to which no response is required. To the  
21 extent a response is required, Paragraph 80 is denied.

22           81. Paragraph 81 asserts legal conclusions to which no response is required. To the  
23 extent a response is required, Paragraph 81 is denied.

24           82. Paragraph 82 asserts legal conclusions to which no response is required. To the  
25 extent a response is required, Paragraph 82 is denied.  
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1           83. Paragraph 83 asserts legal conclusions to which no response is required. To the  
2 extent a response is required, Paragraph 83 is denied.

3           84. Paragraph 84 asserts legal conclusions to which no response is required. To the  
4 extent a response is required, Paragraph 84 is denied.

5           85. Paragraph 85 asserts legal conclusions to which no response is required. To the  
6 extent a response is required, Paragraph 85 is denied.

7           **FOURTH CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF – MAYOR OF**  
8           **SEATTLE’S EVICTION BAN’S UNCONSTITUTIONAL IMPAIRMENT OF A**  
9           **CONTRACT**

10          86. Defendant Ferguson incorporates by reference his responses to the preceding  
11 paragraphs.

12          87. Paragraph 87 asserts legal conclusions to which no response is required. To the  
13 extent a response is required, Paragraph 87 is denied.

14          88. Paragraph 88 asserts legal conclusions to which no response is required. To the  
15 extent a response is required, Paragraph 88 is denied.

16          89. Paragraph 89 asserts legal conclusions to which no response is required. To the  
17 extent a response is required, Paragraph 89 is denied.

18          90. Paragraph 90 asserts legal conclusions to which no response is required. To the  
19 extent a response is required, Paragraph 90 is denied.

20          91. Paragraph 91 asserts legal conclusions to which no response is required. To the  
21 extent a response is required, Paragraph 91 is denied.

22           **FIFTH CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF – MAYOR OF**  
23           **SEATTLE’S EVICTION BAN’S UNCONSTITUTIONAL TAKING OF THE**  
24           **PLAINTIFFS’ RENTAL PROPERTIES**

25          92. Defendant Ferguson incorporates by reference his responses to the preceding  
26 paragraphs.

1           93. Paragraph 93 asserts legal conclusions to which no response is required. To the  
2 extent a response is required, Paragraph 93 is denied.

3           94. Paragraph 94 asserts legal conclusions to which no response is required. To the  
4 extent a response is required, Paragraph 94 is denied.

5           95. Paragraph 95 asserts legal conclusions to which no response is required. To the  
6 extent a response is required, Paragraph 95 is denied.

7                           **SIXTH CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF –**  
8                           **WASHINGTON STATE’S EVICTION BAN’S UNCONSTITUTIONAL**  
9                           **IMPAIRMENT OF A CONTRACT**

10           96. Defendant Ferguson incorporates by reference his responses to the preceding  
11 paragraphs.

12           97. Paragraph 97 asserts legal conclusions to which no response is required. To the  
13 extent a response is required, Paragraph 97 is denied.

14           98. Paragraph 98 asserts legal conclusions to which no response is required. To the  
15 extent a response is required, Paragraph 98 is denied.

16           99. Denied.

17           100. Denied.

18           101. Denied.

19                           **SEVENTH CLAIM FOR DECLARATORY RELIEF – TAKING OF PROPERTY**

20           102. Defendant Ferguson incorporates by reference his response to the preceding  
21 paragraphs.

22           103. Denied

23           104. Denied.

24           105. Denied.

1 **PRAYER FOR RELIEF**

2 Paragraphs 1 through 10 assert Plaintiffs' requested relief to which no response is  
3 required. To the extent a response is required, Defendant Ferguson denies that Plaintiffs are  
4 entitled to the relief requested or to any relief whatsoever.

5 **III. AFFIRMATIVE DEFENSES**

6 Defendant Ferguson's affirmative defenses to the Complaint are set forth below. By setting  
7 forth the following defenses, Defendant Ferguson does not assume burden of proof on any matter  
8 or issue other than those on which he has the burden of proof as a matter of law. Defendant Ferguson  
9 reserves the right to supplement these defenses.  
10

- 11 1. The Eleventh Amendment bars Plaintiffs' claims against Defendant Ferguson.
- 12 2. Defendant Ferguson is entitled to qualified immunity.
- 13 3. Plaintiffs have failed to exhaust administrative remedies.
- 14 4. Plaintiffs lack standing.
- 15 5. Plaintiffs' claims are moot.
- 16 6. Plaintiffs' claims are unripe.
- 17 7. This case is non-justiciable.
- 18 8. This Court lacks subject matter jurisdiction.
- 19 9. Plaintiffs have failed to state a claim upon which relief may be granted.
- 20 10. Plaintiffs have failed to join necessary parties.
- 21 11. Abstention doctrines warrant a stay or dismissal of the case.
- 22 12. The challenged Proclamations have a real and substantial relation to the COVID-19  
23 public health crisis and are not a plain, palpable invasion of Plaintiffs' rights.  
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1           13.     The Proclamations are narrowly tailored to advance a compelling governmental  
2 interest.

3           14.     The Proclamations reasonably and appropriately further the legitimate and  
4 significant goal of combatting the COVID-19 pandemic.

5           15.     The Proclamations are authorized and appropriate uses of the State's police power  
6 to protect public health and welfare.

7           16.     The Proclamations are authorized and appropriate uses of the emergency powers of  
8 the Governor.

9  
10                   **IV.     DEFENDANT FERGUSON'S REQUEST FOR RELIEF**

11           Wherefore, Defendant Ferguson prays that the Court:

- 12           1.     Dismiss Plaintiffs' Complaint for Declaratory and Injunctive Relief with prejudice;  
13           2.     Deny all relief that Plaintiffs request;  
14           3.     Grant Defendant Ferguson his costs and reasonable attorney fees; and  
15           4.     Grant Defendant Ferguson such other and further relief as the Court may deem just  
16 and proper.  
17

18           DATED this 27th day of January, 2021.

19                                   ROBERT W. FERGUSON  
20                                   Attorney General

21                                   /s/ Brian H. Rowe

22                                   BRIAN H. ROWE, WSBA No. 56817  
23                                   ZACHARY PEKELIS JONES, WSBA No. 44557  
24                                   Assistant Attorneys General  
25                                   Complex Litigation Division  
26                                   JEFFREY T. EVEN, WSBA No. 20367  
                                  Deputy Solicitor General  
                                  800 Fifth Avenue, Suite 2000  
                                  Seattle, WA 98104  
                                  (206) 332-7089  
                                  (206) 389-3888

(360) 586-0728  
brian.rowe@atg.wa.gov  
zach.jones@atg.wa.gov  
jeffrey.even@atg.wa.gov  
*Attorneys for Defendant Robert W. Ferguson*

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DATED this 27th day of January 2021, at Seattle, Washington.

DEFENDANT ATTORNEY GENERAL  
FERGUSON'S ANSWER TO FIRST  
AMENDED COMPLAINT  
NO. 2:20-cv-01323-RAJ-JRC